

Internal Revenue Service

Number: **201048026**

Release Date: 12/3/2010

Index Number: 1362.00-00, 1362.01-00,
1362.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-120870-10

Date:
August 23, 2010

LEGEND

X =

Y =

A =

B =

State =

Date =

1
Date =
2

Dear :

This is in response to a letter dated March 23, 2010, and subsequent correspondence submitted on X's behalf by its authorized representative, requesting relief pursuant to § 1362(f) of the Internal Revenue Code.

FACTS

X was incorporated under the laws of State on Date 1, and elected to be treated as an S corporation effective Date 1. A and B entered into negotiations to purchase X's assets. On Date 2, the original shareholders of X sold their stock to Y, a limited liability company owned by A and B. At the time of transfer, Y was an ineligible S corporation shareholder, thereby terminating X's election as an S corporation on Date 2. A and B did not realize that Y was an ineligible S corporation shareholder and that the sale of X stock to Y would terminate X's S corporation election under § 1362(d)(2). Upon discovery of the terminating event, A and B caused Y to transfer the X stock to themselves. X represents that A and B are eligible S corporation shareholders.

X represents that X and its shareholders have filed tax returns consistent with X being an S corporation. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and each person who was or is a shareholder of X at any time since Date 2 have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary with respect to such period.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) will be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that the termination shall be effective on and after the date of cessation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in the termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely upon the information submitted and the representations made, we conclude that X's S corporation election terminated on Date 2, when shares of the stock of X were transferred to Y. We further conclude that the termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation on Date 2, and thereafter, provided that X's S corporation election was not otherwise terminated under § 1362(d).

All of X's shareholders, in determining their respective income tax liabilities during the termination period and thereafter, must include their pro rata share of the separately stated items of income, loss, deduction or credit, and nonseparately stated computed items of income or loss of X as provided in § 1366; make any adjustments to stock basis as provided in § 1367; and take into account any distributions made by X to its shareholders as provided in § 1368. For this purpose, A and B shall be treated as if they directly purchased the X stock on Date 2. X and its shareholders shall make any adjustments as may be necessary, for Federal tax purposes, consistent with this treatment. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except for the specific ruling above, no opinion is expressed or implied concerning the Federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding X's eligibility to be an S corporation.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

/s/

Danielle M. Grimm
Acting Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: